

Tennessee Ethics Commission

January 15, 2008

Pursuant to the call of Chairman Donald J. Hall, the Tennessee Ethics Commission met on Tuesday, January 15, 2008, at 8:30 am at the State Library and Archives. Commissioners Garland, Hall, Knight, Neal and Purser were present. Commissioner Brown was absent. Chairman Hall called the meeting to order at 8:40 am.

The first item on the agenda was approval of the December 3, 2007 minutes. Commissioner Garland moved for adoption of the minutes. Commissioner Neal stated that she had a correction to the minutes: her proposal was that the Executive Director's report be moved to the end of the meeting, not to the end of "Old Business" and any action items in the Executive Director's report be put in "New Business." Commissioner Purser proposed that striking "of the Old Business section" would accomplish Commissioner Neal's proposal. There was no objection to the revision. Commissioner Purser seconded and the minutes were unanimously approved as corrected.

The next item on the revised agenda was the electronic filing of disclosure of interest statements. Chairman Hall stated that the Commission had received numerous letters, emails, telephone calls, and General Counsel Himmelreich's analysis of the issue of mandatory electronic filing. After the Commission heard presentations from David Dahle, Director of Governor Services for NICUSA, Jon Corby, Project Manager, for NICUSA, and from the Executive Director, Commissioner Neal stated that for her part, the fundamental issue was how far the Commission exceeded its authority to require electronic filing. She asked the general counsel for a legal analysis. General Counsel Himmelreich presented his legal analysis that the Commission has no authority to require electronic filing by anyone other than lobbyists and employers of lobbyists. After discussion, Chairman Hall made a motion that "after careful consideration, the Commission has decided that there are aspects of the statute that do leave room for a reasonable individual to disagree; if the statutes are read together, they may yield different results depending upon one's weight and interpretation of individual statutes." The action part of the motion was: 1) that staff be immediately instructed to convey accurate information to filers, i.e., there is a more limited mandated electronic filing, and 2) that the website be corrected as quickly as possible. Commissioner Purser clarified the first part of the motion that disclosure of interests will not be required to be filed electronically except by lobbyists and employers of lobbyists. Commissioner Purser seconded the motion and the motion passed unanimously. Commissioner Purser requested that Mr. Himmelreich prepare a rule so that the Commission can begin the process to establish a rule for next year's filing. Commissioner Purser clarified his request: two rules, one which would allow no exceptions, and one which would allow the Commission a choice of exceptions.

The next item under "Old Business" was the Draft Rules Pertaining to Administrative Sanctions. After discussion, this item was deferred to the next meeting to give General Counsel Himmelreich more opportunity to work on this draft.

Draft Advisory Opinion 07-08 was the next agenda item to be discussed. Parts B, C and D were previously voted on and approved by the Commission. Part A remained to be considered. Commissioner Neal made the motion to adopt the language in Commissioner Knight's draft that would permit state officials to solicit from employers of lobbyists when it was not for their benefit, but for the benefit of an organization. Commissioner Knight seconded. Commissioners Neal and Knight voted in favor of the motion and Commissioners Hall, Purser and Garland voted against the motion. Motion failed. It was decided that there would be a 72-hour turnaround to prepare the staff draft for further discussion.

Draft Advisory Opinion 07-11 was the next item on the agenda. Commissioner Knight made the motion that as soon as draft advisory opinion 07-08 is finalized, it be sent to Mary Margaret Collier, requestor of opinion 07-11, to review and restate any remaining questions and that discussion of 07-11 be deferred. Commissioner Purser seconded the motion and it passed unanimously.

The Rules on Close Personal Friendships were considered. Commissioner Neal moved that the Commission adopt the Rules for the purposes of setting a date for a rule making hearing. Commissioner Garland seconded and the motion passed unanimously.

The Commission heard a presentation from Mark Greene, lobbyist for the Tennessee Lobbyist Association, on legislation the Association will propose to the General Assembly.

Mr. Himmelreich presented the General Counsel's report.

Next, Mr. Androphy presented the Executive Director's report. He and Mr. Himmelreich made a joint recommendation that Willow Fort be hired as the associate general counsel. Chairman Hall disclosed that Ms. Fort was a former student of his and he recommended that she apply for the position. After discussion, Commissioner Garland made the motion to offer the position of associate counsel to Ms. Fort. Commissioner Purser seconded the motion and the vote was unanimous.

Mr. Androphy presented a request for waiver of the 2007 lobbyist training by Tim Wood. After discussion, the Commission declined to grant the waiver. The next request for waiver was for the lobbyist and employer of lobbyist registration fees from the executive director of a 501-C(3) organization. After discussion, Commissioner Purser made the motion to deny the request and Commissioner Neal seconded. The vote was unanimous.

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Commissioner Neal stated that those who wrote the Commission regarding mandatory electronic filing of disclosure statements deserved a written response informing them of the Commission's decision. The Commission concurred and it was decided that the letter would be from Chairman Hall.

The Commission discussed locations of future meetings; one to be held in East Tennessee and one in West Tennessee. Commissioner Neal proposed that meetings held outside of Nashville take place after the legislative session is over.

The next meeting is Tuesday, February 26. The rule making hearing on proposed rules pertaining to complaint proceedings will begin at 8:15 a.m. and the Commission meeting will follow.

The meeting adjourned at 2:15 p.m.

Respectfully submitted,

Becky Bradley